

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT
PANEL B**

IN RE: THOMAS A. YOUNG, Respondent
Arkansas Bar ID#92236
CPC Docket No. 2007-066

FILED

SEP 28 2007

**LESLIE W. STEEN
CLERK**

FINDINGS AND ORDER

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Terry J. Nichols in an Affidavit dated May 31, 2007. The information related to the representation of Mr. Nichols by Respondent beginning in November 2005.

On or about June 7, 2007, Respondent was served with a formal complaint, supported by affidavit from Mr. Nichols. Respondent filed a timely response and the matter proceeded to ballot vote pursuant to the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002).

The information before Panel B of the Committee on Professional Conduct reflected that during July 2003, Mr. Nichols contacted Thomas A. Young, an attorney practicing law primarily in Marion, Arkansas, to represent him in claims for injuries from an auto accident in which he was rear-ended. Mr. Young agreed to represent Mr. Nichols with his fee agreement being contingent in nature and for a percentage of any recovery Mr. Nichols might receive from settlement or trial. The accident occurred on July 18, 2003. The litigation to be filed involved a case of obvious liability because Mr. Nichols was rear-ended by another vehicle whose driver and passenger were illegally attempting to repossess Mr. Nichols' vehicle. Mr. Nichols' vehicle was totaled and he sustained injuries as a result of the accident.

Mr. Young filed a Complaint on Mr. Nichols' behalf in Crittenden County Circuit Court on November 28, 2005. Mr. Young named as Defendants Christy Miller, Jerry Carter d/b/a J&C Repo, AAA Cash Fast, and Tennessee Title Loans. According to Mr. Young, he tried numerous searches as well as other resources to locate the defendants to serve them with the Complaint.

After being served with the Complaint, Practical Ventures, LLC, d/b/a AAA Cash Fast filed an Answer on December 27, 2005. In the Answer, the Defendant Practical Ventures, LLC, denied that proper service had been accomplished. However, its Answer also contained an admission that it had retained J&C Repo (J&C are the initials of the first named defendants) which appears to effectively admit that the driver was an agent of that company. Mr. Young explained that he was on vacation when the Answer was filed by Practical Ventures LLC and one of his secretaries filed it without showing it to him.

On January 25, 2006, Mr. Young obtained an Order of Voluntary Dismissal without Prejudice of Defendant AAA Cash Fast. Mr. Young never took any action to amend the complaint to name Practical Ventures, LLC as a defendant after seeking and obtaining the dismissal of AAA Cash Fast. Further, Mr. Young never discussed the non-suit with Mr. Nichols nor what effect it might have on recovery for his claims for injuries. Tennessee Title Loans had apparently previously made a loan on the vehicle and been paid in full and was inappropriately named as a defendant in the lawsuit.

Mr. Young allowed the statute of limitation to expire as to one of the proper parties. As such, Mr. Nichols has no recourse against a party who could be held accountable and liable for his injuries and property damage.

On March 8, 2006, Mr. Young filed a Motion for Extension of Time to Obtain Service on

Christy Miller and Jerry Carter. Mr. Young stated that Mr. Nichols fired him on March 13, 2006. There was no Motion or other pleading in the file demonstrating that based on his belief that he had been fired that he took any action to be relieved from representation. He remained as counsel of record for Mr. Nichols on the matter throughout the entire time the matter was pending.

On March 14, 2006, Tennessee Title Loans filed its Answer to the Complaint. Mr. Young filed no other pleadings in the case file nor sought any discovery. On July 24, 2006, Mr. Young filed another Motion for Extension of Time to serve Christy Miller and Jerry Carter. Mr. Young asked for and received until November 23, 2006, to perfect service on Christy Miller and Jerry Carter.

Mr. Young presumably was unable to locate the driver and her business partner. Mr. Carter is a convicted child rapist. Attached to the formal disciplinary complaint was the printout from two different web sites listing information from the Tennessee Sexual Offender Registry with information including an address for Mr. Carter. It would seem that some law enforcement agency or the information contained in these registries could have assisted Mr. Young in locating Mr. Carter, had Mr. Young followed through with requesting information.

Mr. Young took no action to file a Warning Order in order to perfect service after he was unable to obtain service through mail or personal service. The time for obtaining service expired before Mr. Young took any other action. On January 19, 2007, without discussing the matter with his client, Mr. Nichols, Mr. Young filed a Motion to Nonsuit the cause of action. The Order was entered that date as well. Mr. Nichols learned all of this by going to the Crittenden County Circuit Clerk's office and reviewing the file.

During the period of time after Mr. Young filed the Complaint and he finally dismissed the matter, Mr. Nichols did not have communication with him. He did not return telephone calls and on two occasions when Mr. Nichols visited the office he was unable to speak with Mr. Young. On March 8, 2006, Mr. Nichols wrote Mr. Young and delivered the letter to him. In the letter, Mr. Nichols asked Mr. Young to release the file to him. Mr. Young did not do so nor did he contact Mr. Nichols after receiving the letter.

Mr. Nichols again wrote Mr. Young in January 2007. In that letter, Mr. Nichols again requested that Mr. Young release the file, without lien, and further, he offered to pay Mr. Young \$500 to cover his out of pocket expenses. Mr. Nichols included his cell phone number along with his address so Mr. Young would be able to reach him. It was after Mr. Young received the letter that he filed the Motion to Nonsuit and obtained the Order granting the same. Mr. Nichols was greatly concerned that Mr. Young's actions and inaction have caused him to lose any opportunity he may have had to recover for his injuries.

Mr. Young denied that he was responsible for any prejudice to Mr. Nichols because he did not believe he had any obligation to Mr. Nichols after March 13, 2006. He placed the blame for the matter being barred with Mr. Nichols for not picking up his file in a timely manner in March 2006.

Upon consideration of the formal complaint and attached exhibit materials, the response to it, and other matters before it, and the Arkansas Model Rules of Professional Conduct, Panel B of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Mr. Nichols' conduct violated Rule 1.1, when he was not thorough enough in his representation of Mr. Nichols to be certain that he obtained sufficient service of process upon

the Defendant, Christy Miller, within the time allowed by law for doing so; that he was not thorough enough in his representation of Mr. Nichols to be certain that he obtained sufficient service of process upon the Defendant, Jerry Carter, individually, and as agent of J&C Repo, within the time allowed by law for doing so; that he was not thorough enough in his representation of Mr. Nichols to be certain that he accomplished all of the requirements for properly invoking the "savings statute" in Arkansas to protect Mr. Nichols' lawsuit and claims; and, that he was not thorough enough in his representation of Mr. Nichols to amend to sue Practical Ventures, LLC, after it filed an Answer for AAA Cashfast. Rule 1.1 required that a lawyer provide competent representation to a client, including the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. That Mr. Nichols' conduct violated Rule 1.2(a), because he failed to abide by the objective of his client, Terry Nichols, to pursue to settlement or judgment his claims arising from the July 18, 2003, motor vehicle collision in which he was involved, and in which he believed others to be at fault. His failure to obtain proper service of the Defendants defeated the objective of Mr. Nichols. Rule 1.2 (a) requires subject to paragraphs (c) and (d), that a lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.

3. That Mr. Nichols' conduct violated Rule 1.3, when he failed to properly serve Christy Miller with the lawsuit he filed on Mr. Nichols' behalf within the time allowed by law causing his claims for injuries to be barred by the statute of limitation in accordance with Arkansas statutes and case law; when he failed to properly serve Jerry Carter with the lawsuit he

filed on Mr. Nichols' behalf within the time allowed by law causing his claims for injuries to be barred by the statute of limitation in accordance with Arkansas statutes and case law; when he took no timely action to have Christy Miller served by Warning Order after he was unable to obtain personal service on her of the lawsuit he filed on Mr. Nichols' behalf; when he took no timely action to have Jerry Carter served by Warning Order after he was unable to obtain personal service on him of the lawsuit he filed on Mr. Nichols' behalf; and, when he failed to pursue Mr. Nichols' claims in the lawsuit he filed on his behalf with any amount of diligence or promptness. Rule 1.3 requires that a lawyer shall act with reasonable diligence and promptness in representing a client.

4. That Mr. Young's conduct violated Rule 1.4(a)(1), when he failed to discuss with Mr. Nichols the Motion for Voluntary Dismissal he filed with regard to Defendant AAA Fast Cash before obtaining the Order granting the dismissal; and, when he failed to discuss the Motion for Nonsuit he filed in January 2007 with Mr. Nichols before he took action to file it and obtain an Order granting the same. Rule 1.4(a)(1) requires that a lawyer promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules.

5. That Mr. Young's conduct violated Rule 1.4(a)(3), when he failed to keep Mr. Nichols informed of any efforts he was undertaking on his behalf after he filed the lawsuit on Mr. Nichols' behalf in November 2005. Rule 1.4(a)(3) requires that a lawyer shall keep a client reasonably informed about the status of a matter.

6. That Mr. Young's conduct violated Rule 1.4(a)(4), when he failed to promptly return the telephone messages left for him by Mr. Nichols during the time he represented him;

and, when he did not respond to the written communication Mr. Nichols sent to him during the time Mr. Young represented Mr. Nichols. Rule 1.4(a)(4) requires a lawyer to promptly comply with reasonable requests for information.

7. That Mr. Young's conduct violated Rule 3.2, because after filing the Complaint for Mr. Nichols, he failed to make reasonable efforts to expedite the litigation as Mr. Nichols wished for him to do. Rule 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of the client.

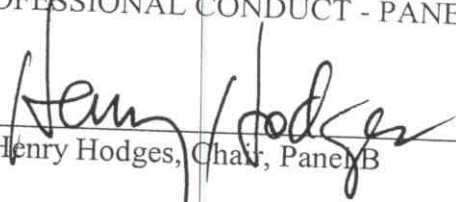
8. That Mr. Young's conduct violated Rule 8.4(d), because his failure to take timely and appropriate action on Mr. Nichols' behalf with regard to obtaining service on Christy Miller and / or Jerry Carter in the lawsuit he brought in Crittenden County Circuit Court appears to have caused the same to be barred by the statute of limitation according to Arkansas case law interpreting the "savings statute" and because his failure to take timely and appropriate action on Mr. Nichols' behalf to add Practical Ventures, LLC, as a party, after they filed an answer on behalf of AAA Cashfast appears to have caused the same to be barred by the statute of limitation. Rule 8.4(d) requires that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

WHEREFORE, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel B, that THOMAS A. YOUNG, Arkansas Bar ID#92236, be, and hereby is, CAUTIONED for his conduct in this matter. Further, pursuant to Section 18.A. of the Procedures, Mr. Young is assessed the costs of this proceeding in the amount of \$50. In addition, pursuant to Section 18.B. of the Procedures, Mr. Young is ordered to pay a fine in the amount of \$250. The fine and costs assessed herein,

totaling \$300, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional Conduct within thirty (30) days of the date this Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE
ON PROFESSIONAL CONDUCT - PANEL B

By: _____


Henry Hodges, Chair, Panel B

Date: _____

